

EXTENSIONS OF REMARKS

POCKET-VETO POWERS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 26, 2010

Ms. PELOSI. Madam Speaker, I submit for the RECORD a copy of a letter signed jointly by myself and the Republican Leader, Mr. BOEHNER. It is addressed to President Obama. In it, we express our views on the limits of the “pocket-veto” power. I also submit a copy of the letters referenced therein.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
May 24, 2010.

Hon. BARACK OBAMA,
The President, The White House,
Washington, DC.

DEAR MR. PRESIDENT: This is in response to your actions of December 30, 2009, on House Joint Resolution 64, a short-term continuing resolution of appropriations that was presented to you on December 19, 2009. That measure was intended to accommodate your review and approval of the regular appropriations but was rendered unnecessary when you were able to act swiftly on the regular appropriations. You therefore decided not to approve the joint resolution. Although you cited The Pocket Veto Case, 279 U.S. 655 (1929), you returned the parchment to the House with a memorandum of disapproval stating that you wanted to leave no doubt that the joint resolution was being vetoed as unnecessary.

You acted on the joint resolution on the ninth day of the 10-day period during which you could approve it. The standing rules of the House made the Clerk available to receive your message. The House and Senate stood adjourned sine die but with provision for reassembly of the first session and with the certainty of reassembly for the second session of the instant Congress. Thus, each body was in a position to reconsider the vetoed measure in light of your objections, either in the second session or even in the first session.

The circumstances surrounding the presentment and return of House Joint Resolution 64 and the readiness of Congress to reconsider the joint resolution in light of Presidential objections compel us to question the assertion that a pocket veto did or could have occurred. We think you agree that the pocket veto and the return veto are available on mutually exclusive bases and, therefore, during mutually exclusive periods. We think you also should agree that the constitutional concern that a measure not become law without the President's signature when an adjournment prevents a return veto does not arise when the President is able to return the parchment to the originating House with a statement of his objections. Accordingly, we believe that your return of House Joint Resolution 64 with your objections is absolutely inconsistent with this most essential characteristic of a pocket veto, to wit: retention of the parchment by the President for lack of a legislative body to whom he might return it with his objections. Your successful return of House Joint Resolution 64 establishes that you were not prevented from returning it.

After an enrolled measure is presented for Presidential approval, the parchment ultimately meets one of four ends. It might be tendered to the Archivist by the President because he signed it or allowed it to become law without his signature. It might be referred to committee by the first house to sustain a veto. It might be tendered to the Archivist by the second house to override a veto. Or it might be retained by the President because he “pocketed” it. If the President returns a parchment to the Congress, then he has not pocketed it, and it therefore is subject to reconsideration. Either the Congress has prevented the President from returning the parchment with a statement of his objections or it has not. By returning the parchment a President is admitting that he is not prevented from returning it.

The House has treated your message of December 30, 2009, on House Joint Resolution 64 as a return veto. On January 12, 2010, the message—comprising the parchment and your memorandum of disapproval—was laid before the House. After the memorandum was read, your objections were entered in the Journal and the House obeyed the command of the Constitution to “proceed to reconsider” the joint resolution. Rather than immediately considering the ultimate question of overriding or sustaining the veto, the House chose as its first mode of reconsideration a postponement until January 13, 2010. On that day the House reconsidered the joint resolution in light of your objections and voted by the yeas and nays on the question of overriding or sustaining the veto. The House sustained your return veto.

We enclose for your consideration copies of previous letters to President George H. W. Bush, to President Clinton, and to President George W. Bush, respectively dated November 21, 1989, September 7, 2000, and April 14, 2008. Those letters from Speaker Foley and Leader Michel, from Speaker Hastert and Leader Gephardt, and from the two undersigned, respectively, expressed the profound concern of the bipartisan leaderships over similar assertions of pocket vetoes. We echo those concerns and urge you to give appropriate deference to such judicial resolutions of this question as have been possible.

Thank you for your attention to this matter.

Best regards,

NANCY PELOSI,

Speaker of the House.

JOHN A. BOEHNER,

Republican Leader.

CONGRESS OF THE UNITED STATES,

Washington, DC, April 14, 2008.

Hon. GEORGE W. BUSH,
The President, The White House,
Washington, DC.

DEAR MR. PRESIDENT: This is in response to your actions of December 28, 2007, on H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008, which you returned to the House of Representatives without your approval. In returning the parchment you transmitted a memorandum of disapproval stating your objections to enactment of the bill. This memorandum of disapproval included the following paragraph:

“The adjournment of the Congress has prevented my return of H.R. 1585 within the meaning of Article I, section 7, clause 2 of the Constitution. Accordingly, my with-

holding of approval from the bill precludes its becoming law. The Pocket Veto Case, 279 U.S. 655 (1929). In addition to withholding my signature and thereby invoking my constitutional power to ‘pocket veto’ bills during an adjournment of the Congress, I am also sending H.R. 1585 to the Clerk of the House of Representatives, along with this memorandum setting forth my objections, to avoid unnecessary litigation about the non-enactment of the bill that results from my withholding approval and to leave no doubt that the bill is being vetoed.”

The circumstances surrounding the presentment and return of H.R. 1585 and the readiness of Congress to reconsider the bill in light of Presidential objections compel us to question the assertion that a pocket veto did or could have occurred. We think you agree that the pocket veto and the return veto are available on mutually exclusive bases and, therefore, during mutually exclusive periods. We think you should also agree that the constitutional concern that a bill not become law without the President's signature when an adjournment prevents a return veto does not arise when the President is able to return the parchment to the originating House with a statement of his objections. Accordingly, we believe that your return of H.R. 1585 with your objections is absolutely inconsistent with this most essential characteristic of a pocket veto, to wit: retention of the parchment by the President for lack of any body to whom he might return it with his objections. Your successful return of H.R. 1585 establishes that you were not prevented from returning it.

H.R. 1585 was presented to you on December 19, 2007. You returned the bill on December 28, 2007—the eighth of the ten days allowed under the Constitution. The Clerk was available pursuant to the standing rules of the House to receive your message. The Congress was in a position to reconsider the bill in light of Presidential objections, even in the first session of the instant Congress. Although the House had adjourned sine die (without specifying a day of return), it did so with provision for its reassembly. Moreover, both houses were to reassemble in due course for a second session of the instant Congress.

After an enrolled bill is presented for Presidential approval, the parchment ultimately meets one of four ends. It might be tendered to the Archivist by the President because he signed it or allowed it to become law without his signature. It might be referred to committee by the first house to sustain a veto. It might be tendered to the Archivist by the second house to override a veto. Or it might be retained by the President because he “pocketed” it. If the President returns a parchment to the Congress, then he has not pocketed it, and it therefore is subject to reconsideration. Either the Congress has prevented the President from returning the parchment with a statement of his objections or it has not. By returning the parchment a President is admitting that he is not prevented from returning it.

The House has treated your message of December 28, 2007, on H.R. 1585 as a return veto. On January 15, 2008, the message—comprising the parchment and your memorandum of disapproval—was laid before the House. After the memorandum was read, your objections were entered in the Journal and the House obeyed the command of the

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.